



Washington State Association of Counties

October 31, 2011

Supreme Court of Washington
P.O. Box 40929
Olympia, WA 98504-0929

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2011 OCT 31 P 2:31
BY RONALD R. CARPENTER
CLERK

RE: Comments to Proposed Standards for Indigent Defense Services

Dear Supreme Court Justices:

Thank you for the opportunity to provide comments on the proposed adoption of Standards for Indigent Defense Services pursuant to statewide court rules CrR3.1, CrRLJ 3.1 and JuCR 9.2. We request that you do not adopt the Standards as proposed by the Washington State Bar Association (WSBA) Council on Public Defense (CPD). As a representative of the county legislative and budget authorities, we believe it is imperative that the Washington State Supreme Court adopt rules that provide a constitutional level of service but allow for us to decide how to allocate scarce resources amongst competing needs. We believe that the Standards as proposed exceed the constitutional required level of service, do not provide any flexibility, and would require a significant reallocation of resources away from other core government functions.

Counties were assigned by the Legislature the constitutional duty to provide adequate defense. The Standards as proposed by the CPD redefine what constitutes adequate defense, yet gives counties no ability to ensure that the standards are met. Standard 14(1) states that "attorneys providing services shall meet the following minimum professional qualifications....", but there is no mechanism for certifying that they have met those standards. Standards 14(2), 14(3), and 14(4) create a byzantine certification matrix with no centralized tracking or regulation provision for any of the certification criteria. What then are the implications of an attorney not meeting the certification requirements in a given case? We are also extremely concerned that the outcome of all juvenile and adult criminal cases would be uncertain due to the potential of a stand-alone challenge based on a rules violation.

We remain committed to helping develop professional standards. The Washington State Association of Counties, in conjunction with the Association of Washington Cities provided the CPD with an alternative standard. We have attached our proposed standard for the Courts consideration as well. The amended rules direct trial courts to require each public defense attorney to "certify to the court that he or she complies with applicable Standards for Indigent Defense Services to be approved by the Supreme Court". Our proposal does just that: requires the public defense attorney, for each case, to certify that they meet certain criteria. We encourage the Court to refer the professional standard issue back to the WSBA Court Rules and Procedures Committee so we can work together to develop professional standards.

It is our belief that specific caseload standards do not need to be adopted. RCW 10.101.030 already requires each county or city to adopt caseload standards for the delivery of public defense services. Allocating resources based on inputs does not guarantee a desired outcome and requiring local governments to comply with the CPD Standards could result in unintended consequences, especially in light of finite local resources. We are also concerned that this action potentially infringes on our legislative authority; both in its potential to drive budget but also in the potential to change the structure of the criminal justice system and specifically misdemeanor filing practices. Additionally, as evidenced by the October 10, 2011 letter from the WSBA to the Court, there are unresolved issues regarding the definition of what a case is and how a case should be weighted. We request the Court not adopt caseload standards.

Thank you very much for your consideration.

A handwritten signature in black ink that reads "John Koster". The signature is written in a cursive style with a large, stylized "J" and "K".

John Koster
WSAC President
Council Member, Snohomish County

Rule CrR 3.1(d)(4) and CrRLJ 3.1(d)(4)

(d) Assignment of Lawyer.

(4) Before appointing a lawyer for the indigent person or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court orally or in writing that he or she ~~complies~~ meets or will comply with the ~~following applicable Standards for Indigent Defense Services to be approved by the Supreme Court.~~

(i) That he or she has a caseload such that he or she can provide to the defendant effective assistance of counsel as guaranteed by the Constitution. In making this certification, the defense attorney shall consider the number of open cases for which he or she is counsel of record; the type or complexity of those cases as well as the new case; his or her experience; any local standards; and the manner in which the jurisdiction processes cases.

(ii) That he or she has access to a location that will accommodate confidential meetings with the defendant, the receipt of mail, and adequate telecommunications services to ensure prompt response to defendant contact.

(iii) That he or she will arrange to meet with the defendant prior to the entry of a plea, settlement, or the commencement of trial.

(iv) That he or she will evaluate the evidence against the defendant and the likelihood of conviction at trial and will consider the use of additional investigation services and necessary experts, if any, and that the lawyer will advise the defendant such that the defendant may make a meaningful decision as to how to proceed with his or her defense.

(v) That he or she will inform the defendant of the specific elements required to prove the commission of the charged crime(s); possible defenses; possible consequences; and the standard range sentences, any mandatory sentences and the maximum terms of incarceration and supervision that could result from a conviction for the charged crime(s).